

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5184 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NIKETANBHAI PATEL

Versus

NARENDRAKUMAR R BHATT  
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Appearance:

MR RA MISHRA for Petitioners  
MR PK SHASHTRI for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/06/2000

ORAL JUDGEMENT

This petition has been filed by the petitioners  
above named challenging the judgment and order recorded  
in Application No.106/87 by the Gujarat Secondary

Education Tribunal (for short, 'the Tribunal') at Ahmedabad on 20.4.1989. The learned Tribunal allowed the said application and directed that the respondent will be entitled to compensation equal to six months' salary including allowances. The tribunal further directed the petitioners to pay to the respondent compensation equal to six months' salary including allowances within three months from the date of receipt of the order. The facts may be briefly stated as follows:

2. The first respondent was appointed by order dated 3.12.1976 as Assistant Teacher. That there was reduction in the class and, therefore, first respondent was declared as surplus and after having declared surplus, he was absorbed in another School. First respondent was absorbed in R.P.T.P. Science College, Higher Secondary Complex, Vallabh Vidyanagar by the order of the second respondent. While absorbing the respondent, his last pay and other allowances were protected and his services were treated as continuous without any break as if there was no declaration of surplus and there was no break in service, and that the service continued with the same terms and conditions with which the respondent No.1 would have served with the Institution of the petitioners. The petitioners also state that in view of the aforesaid position, there is no termination and there is no question of paying any compensation under Regulation 33. The petitioners also say that in spite of the aforesaid position, the first respondent filed the aforesaid application No.106/87 before the learned Tribunal which was decided in favour of the first respondent as aforesaid. The judgment of the learned Tribunal has been placed at Annexure 'A'. The petitioners have contended that the application preferred by the first respondent before the Tribunal was barred by delay and laches and it was not maintainable in view of the circular issued by the Government of Gujarat dated 15.6.1987. That the first respondent did not suffer anything on account of declaration of the petitioners. That the first respondent was treated as surplus. That there is no question of paying any compensation to the first respondent under regulation 33, and therefore, the Tribunal has committed serious error in holding that the first respondent was entitled to compensation under Regulation 33. That in view of the aforesaid matter, the judgment and order of the learned Tribunal are illegal and erroneous and deserve to be set aside. The petitioners therefore, pray to issue appropriate writ, order or direction quashing and setting aside the judgment and order passed by the learned Tribunal dated 20.4.1989 in Application No.106/87 in favour of first

respondent and against the petitioners directing the petitioners to pay compensation to the first respondent under Regulation 33.

3. At the admission stage, rule was issued and interim relief in terms of para 11 (B) was granted in favour of the petitioners by this Court. The respondents have put in appearance. Today, when the matter was called out, learned Advocate appearing for the petitioner was present. He has argued out the matter. Therefore, I have heard the learned Advocate for the petitioners and have perused the papers. The facts are not very much in dispute and the respondents have not filed any affidavit-in-reply or documents to defend judgment of the tribunal. Therefore, we have to rely and depend on averments made in the petition and also the averments made in the judgment of the tribunal. The facts are not very much in dispute that the first respondent was appointed as Teacher on 31.12.1976. Then he was declared as surplus and he was appointed in another institution. Admittedly, there is no loss of seniority. There is no loss of pay-scale. There is no loss to the first respondent with respect to his status or anything and there is no serious dispute about the same. The question is that despite the aforesaid position whether the first respondent is still entitled to compensation under regulation 33. The learned Tribunal has observed in its judgment that the Tribunal has consistently held that right to compensation is an unconditional right and the management is bound to pay compensation as per regulation 33 irrespective of the fact of the employee having suffered any loss in terms of money, break in service etc. or irrespective of availability of grant in respect of amount of compensation. That the tribunal has observed that the provision contained in regulation 33(1) is analogous to the provisions contained in Section 25(F) of the Industrial Disputes Act. That regulation 33 (1) not only pre-supposes loss to an employee whose services are terminated but also quantifies the loss on the basis of the length of service in that particular private secondary school. The Regulations do not leave any discretion in the tribunal to refuse to award compensation as per the formula prescribed if the requirements of Regulation 33(1) are satisfied.

4. In the present case, I find that there is no dispute about the existence of the requirement of Regulation 33(1). It is, therefore, clear that in the present case, the requirements of Regulation 33(1) have been complied with and there is no alternative but to direct the petitioners to pay compensation to the first respondent in accordance with Regulation 33(1). On this

point, the tribunal has considered two decisions of this Court. First is of Special Civil Applications No.427, 506 and 507 of 1980 dated 12.9.1983. There also this Court had occasion to consider provisions contained in Regulation 33. There it has been observed that even if the teacher gets employment in another aided school, some type of loss of service benefit is bound to accrue. As for example, in the matter of seniority. If such a teacher is absorbed in another secondary school comes to be retrenched, so to say, in the form of his termination of service because of the surplusage of his, he would get compensation only on the basis of the service rendered in that latter school. In the present case, there is no dispute of requirement of length of service has been satisfied. There also Special Civil Application was filed challenging the judgment and order of the Gujarat Secondary Education Tribunal.

5. The second decision relied on by the petitioner is of Special Civil Application No.1173/84 decided by this Court on 1.5.1984. There also the Managing Trustee of the Trust had filed petition challenging the judgment and order of the Gujarat Secondary Education Tribunal on account of the provisions contained in regulation 33 of the Gujarat Secondary Education Regulations, 1974. There the aforesaid judgment and order of the Tribunal in favour of the teacher was upheld. Therefore, there are at least two decisions of the Division Bench of this Court holding that the surplus teachers are entitled to compensation under Regulation 33, thus, without any qualification provided the requirements of Regulation 33 are satisfied. In the present case also admitted position is that the requirement of Regulation 33(1) are satisfied and, therefore, there is no alternative for the petitioners but to pay compensation to respondent No.1 in accordance with the requirement of Regulation 33(1).

6. In the premises, the tribunal cannot be said to have committed any error in holding that the first respondent is entitled to compensation under Regulation 33. Consequently, the judgment and order of the tribunal cannot be treated to be illegal and erroneous and cannot be set aside. This would show that the petition is without any merit and deserves to be dismissed.

7. In the aforesaid view of the matter, this petition is dismissed. There was no appearance of first respondent when the matter was argued. Therefore, there shall be no order as to costs and the party shall bear their own costs in this Special Civil Application.

Rule discharged. Interim relief is vacated.

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msp